

**Letter of Findings: 01-20170214**  
**Indiana Individual Income Tax**  
**For The Tax Years 2004, 2005, 2006, 2007, 2009,**  
**2010, 2011, 2012, 2013, 2014, & 2015**

**NOTICE:** IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

### HOLDING

Individual was liable for additional individual income tax because he failed to provide documentation to rebut the presumption that Best Information Available assessments issued by the Department were correct.

### ISSUE

#### **I. Individual Income Tax - Best Information Available Assessment.**

**Authority:** IC § 6-3-2-1; IC § 6-8.1-5-1; *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012).

Taxpayer protests the proposed assessments of individual income tax based on best information available to the Department.

### STATEMENT OF FACTS

Taxpayer is an individual resident of Indiana. Taxpayer did not file his Indiana full-year resident income tax return (Form IT-40) for tax years 2000 through 2007 and 2009 through 2015 ("Tax Years at Issue"). In 2012, the Internal Revenue Service ("IRS") conducted an audit of Taxpayer's federal returns for tax years 2004 and 2005. In October 2016, the Indiana Department of Revenue ("Department") issued a non-filer letter to Taxpayer informing him that he had thirty days within which to file the tax returns for the Tax Years at Issue. Taxpayer did not file the requested returns within the thirty day deadline. The Department utilized the best information available ("BIA") and information received from the IRS to issue proposed assessments for tax years 2004, 2005, 2006, 2007, 2009, 2010, 2011, 2012, 2013, 2014, and 2015.

Taxpayer protested the proposed assessments and an administrative hearing was held. Taxpayer was provided additional time within which to submit the unfiled returns but failed to respond to follow-up requests for information. This Letter of Findings results and addresses Taxpayer's protest of the proposed assessments. Additional facts will be provided as necessary.

#### **I. Individual Income Tax - Best Information Available Assessment.**

### DISCUSSION

Taxpayer protested the proposed assessments and argued that the amount of additional income attributed to him by the Department for the Tax Years at Issue is incorrect. During the administrative hearing, Taxpayer asserted that the proposed assessments were not accurate because he was unemployed during the Tax Years at Issue. Taxpayer was provided the opportunity to file the missing returns but failed to do so within the time provided and failed to respond to follow-up requests for the returns.

As with any assessment of additional tax, Taxpayer bears the burden of establishing that the Department's assessments are incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dep't of*

*State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Thus, a taxpayer is required to provide documentation explaining and supporting his challenge that the Department's assessment is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012).

Indiana imposes an income tax on "the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person." IC § 6-3-2-1(a).

The Department was required to issue the proposed assessments under the authority of IC § 6-8.1-5-1(b), which states:

If the department reasonably believes that a person has not reported the proper amount of tax due, the department **shall** make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the department. (**Emphasis added**).

During the hearing, Taxpayer explained that he had previously been self-employed but lost his business in 2006. Taxpayer stated that he briefly worked for a company in 2007 and 2008 and filed an income tax return for tax year 2008. Aside from his brief period of employment in 2007 and 2008, Taxpayer stated that he was unemployed for most of the Tax Years at Issue. It was agreed at the hearing that Taxpayer would file the missing returns for tax years 2004 through 2007, and 2009 through 2015, within thirty days of the hearing. Taxpayer was provided an additional month after the initial deadline to file the returns for the Tax Years at Issue, which would have canceled the BIA assessments, but he did not respond to a follow-up request for the documents.

Taxpayer has not provided any documentation to rebut the statutory presumption that the BIA assessments for the Tax Years at Issue were correct. Therefore, Taxpayer has failed to meet his burden under IC § 6-8.1-5-1(c) of proving that the Department's proposed assessments were wrong.

### FINDING

Taxpayer's protest is respectfully denied due to Taxpayer's failure to provide requested documentation.

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